IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 917 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBUBHAI @ AMBALAL CHHAGANBHAIPARMAR

Versus

STATE OF GUJARAT

Appearance:

MR DN PANDYA for Petitioner

MR KT DAVE, APP, for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. The Sub-Divisional Magistrate, Bharuch, passed an order on May 31, 1999, in exercise of powers under Section 56(a) of the Bombay Police Act, 1951, externing the petitioner from the territories of Bharuch, Narmada, Surat and Baroda districts for a period of one year. The

said order was challenged by the externee before the Appellate Authority, as provided under Section 60 of the Bombay Police Act. That appeal came to have been dismissed. This petition arises out of the above referred two orders.

2. Prior to passing the order, the externing authority gave a notice contemplated under Section 59 of the Bombay Police Act to the proposed externee/petitioner. The petitoner gave a reply and, after holding proceedings for externment, the externing authority passed the impugned order. The externing authority took into consideration six cases registered against the externee, one of which is Chapter Case No.11 of 1998 under Section 110(g) of Code of Criminal Procedure. The externing authority also considered statements of four anonymous witnesses in respect of incidents that occurred on June, 10, 1998, July 7, 1998, July 11, 1998 and August 14, 1998. The externing authority recorded a satisfaction that, if the proposed externee is not externed, his activities may affect public order. The authority also observed that he is required to be externed from contiguous districts of Narmada, Surat and Vadodara, so that he may not continue his activities by making these districts as head quarter.

3. The petitioner has challenged the order of the externing authority as well as the appellate authority on various counts. However, Mr. Pandya, learned advocate appearing for the petitioner, has restricted his arguments to the fact that the externing authority has taken into consideration an irrelevant factor, namely, Chapter Case No.11 of 1998. In this regard, he has drawn attention of this Court to the fact that, pursuant to the notice under Section 59, the petitioner gave a reply to the notice. Therein, the petitioner has categorically brought it to the notice of the externing authority that the Chapter Case is concluded and the petitioner is discharged. In spite of this, the externing authority has placed reliance on this Chapter Case along with certain other material. Mr. Pandya submitted that consideration or irrelevant material has vitiated the externment order.

3.1 Mr. Pandya submitted further that the last offence registered against the petitioner relates back to October 24, 1997. If the incidents narrated by the anonymous witnesses are considered, last such incident relates back to August 14, 1998, order is passed on May 31, 1999 and, therefore, there was no livelink between the petitioner's alleged activities and the order, when

the order was passed. This aspect is not considered by the externing authority, which reflects non-application of mind, according to Mr. Pandya and, therefore, the petition may be allowed.

4. Learned Additional Public Prosecutor, Mr. K.T. Dave, has opposed this petition. He has submitted that there is no delay in passing the order and it cannot be argued that the causal connection is snapped. He has drawn attention of this Court to the fact that the notice was issued on November 30, 1998. Thereafter, reply was given, externment proceedings were conducted and the order was passed. This has consumed time and, therefore, there is no delay in passing the order. Therefore, the petitioner may be dismissed.

5. Considering rival side contentions, there appears to be substance in the argument advanced by Mr. Pandya, so far as they relate to consideration of irrelevant material by the externing authority reflects non-application of mind. So far as the other contention is concerned, the argument advanced by Mr. Pandya cannot be upheld for the reason that the reply to the notice was submitted by the proposed externee on January 11, 1999, thereafter, the proceedings were conducted and the impugned order was passed on May 31, 1999. Therefore, the petitioner is not able to indicate inordinate delay.

6. Coming to the first contention raised by Mr. Pandya, it is correct that the impugned order took into consideration Chapter Case No.11 of 1998 under Section 110(g) of Code of Criminal Procedure. This case formed part of the notice under Section 59 of the Bombay Police Act and the proposed externee, in his reply to the notice, has categorically stated in paragraph 9 of his reply (Annexure-D) that the Chapter proceedings have been concluded and he has been discharged and, therefore, it cannot be considered by the externing authority. Despite this, the externing authority has taken into consideration this factor while passing the order. When the Chapter case was concluded by competent Court and the petitioner was discharged from his liability of furnishing a surety, in absence of any challenge to that order, it assumes finality and, therefore, it became irrelevant so far as passing of externment order is concerned. The externing authority could not have taken into consideration this aspect. The order passed on such irrelevant material reflects non-application of mind, particularly when the attention of the externing authority was drawn by the proposed externee while giving reply to the notice. Consideration of other relevant

factors along with the irrelevant factors lose significance and the order gets vitiated. For this purpose, reliance is placed on the decision in the case of Ramjibhai Popatbhai Kasundra (Patel) V. S.A. Ziba and Ors., 1999(2) GLR 1827 and, therefore, the petition deserves to be allowed.

7. In view of the above discussion, the petition is allowed. The impugned order of externment dated May 31, 1999 (Annexure-G) and the the order of the appellate authority dated September 4, 1999 (Annexure-A) are hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]
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